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SUBJECT: 2009 SPECIAL 301 REVIEW: INPUT FROM GUATEMALA

REF: A. SECSTATE 8410
[1](#)B. GUATEMALA 557
[1](#)C. GUATEMALA 1422

[1](#)1. (U) Summary: Post recommends that Guatemala be moved to the Special 301 Priority Watch List for 2009 and that specific actions be requested to improve the enforcement of Intellectual Property Rights (IPR). In November 2008, the Ambassador communicated USG concerns over IPR enforcement with Attorney General Velasquez and followed up in February 2009 with a letter announcing the Special 301 process. Unfortunately, Attorney General Velasquez, who took over the Public Ministry in July 2008, inherited a weak institution and faces demands to improve performance in many high-priority areas including organized crime, homicide, and narco-trafficking. However, we will continue to press the GOG at the highest levels for concrete actions against IPR violations and believe that inclusion on the Priority Watch List would demonstrate the importance the USG places on protecting IPR. End Summary.

A disappointing year

[1](#)2. (SBU) In November 2008, the Ambassador met with Attorney General Jose Amilcar Velasquez and stressed the need for Guatemala to improve its enforcement of Intellectual Property Rights (IPR). As discussed in reftels, local industry groups shared their concerns with the Embassy regarding the lack of enforcement capacity in patents and trademarks, the lack of any significant legal cases against manufacturers of pirated or counterfeit goods, and the difficulty companies had in pursuing cases with the special IPR prosecutor. Following up on the Ambassador's meeting, Econoff, the IPR Registrar who reports to the Minister of Economy, and leadership of the American-Guatemalan Chamber of Commerce (AmCham) met with Attorney General Velasquez and requested that IPR prosecutor Norma Bonilla be replaced. Velasquez expressed his understanding of the importance of protecting IPR as a prerequisite for economic growth, protecting consumers and attracting investment. Velasquez promised he would replace the ineffective IPR prosecutor Norma Bonilla once she returned from extended medical leave and strengthen the IPR office, including bringing back a key staff member, Hugh Garcia, who was forced out of the IPR office by prosecutor Bonilla due to his refusal to stall IPR cases. Garcia had recently returned from a Department of State voluntary visitor program focused on IPR protection.

[1](#)3. (SBU) Attorney General Velasquez, who inherited a dysfunctional organization upon taking over its leadership in July 2008, faces many demands to improve the organization he leads including focusing on such high-priority areas as organized crime, homicides, and narco-trafficking. Unfortunately, the lack of attention paid to IPR enforcement in 2008 resulted in a very disappointing year. Velasquez's Secretary General informed Pol/EconCouns that as of end of

February 2009, inefficient IPR prosecutor Bonilla remained on extended medical leave and no formal action could therefore be taken to re-organize the section until she returned. The Public Ministry did not respond to our request for IPR enforcement statistics for the year. However, the GOG reported in response to question 126 of the World Trade Organization's Trade Policy Review for Guatemala that during 2008 only ten IPR cases were pursued with nine resulting in a sentence. This number indicates a drop of more than half from the 23 cases that were prosecuted in 2007. While damage caused by lack of IPR enforcement is difficult to estimate, the Business Software Alliance lists Guatemala as second in piracy in Central America and in the world's top twenty piracy in Central America and in the world's top twenty offenders with a piracy rate of 81%. The AmCham released a CID Gallup Latin America study in December 2007 that estimated \$324 million is spent annually on pirated goods in Guatemala.

Improvements needed

14. (SBU) The most important step that should be taken by Attorney General Velasquez is to formally remove IPR prosecutor Norma Bonilla and re-organize the IPR prosecutor's office, including bringing back legal advisor Hugo Garcia who received substantial USG IPR training. The Public Ministry should also improve its coordination with the Ministry of Government to conduct raids against entities suspected of IPR violations and pursue cases against manufactures of pirated and counterfeit goods rather than focus on small-scale distributors. In addition, the IPR prosecutor should re-establish links with industry and the number of IPR cases pursued in 2009 should increase from the 2007 level of 23. The USG and industry will continue to encourage the nomination of a strong IPR prosecutor and coordinate on providing training as needed. We therefore recommend that Guatemala be considered for inclusion in the Special 301 Priority Watch List for 2009 to emphasize that stronger enforcement of intellectual property rights in Guatemala is a USG priority.

McFarland